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IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1973

MICHAEL YODAK, JR.

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No. 73-5661

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FRANCIS A. ADAMS, ROBERT J. STENEMAN;  
and MICHAEL W. YOUNGQUIST,

*Petitioners,*

v.

THE SECRETARY OF THE NAVY and  
COMMANDANT OF THE MARINE CORPS,

*Respondents.*

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT  
OF APPEALS FOR THE NINTH CIRCUIT

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REPLY BRIEF FOR PETITIONERS

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ARGUMENT

I.

THE GOVERNMENT HAS FAILED TO SHOW THAT  
SIX MONTHS OR MORE DOES NOT EQUAL A  
FULL YEAR FOR ELIGIBILITY AND COMPUTA-  
TION

The statute, 10 U.S.C. 687(a), (1962), is clear on its  
face. There is no need to resort to legislative history.

The plain meaning of the words of the statute is expressed in three clauses:

The standard is set:

"... At least five *years* of *continuous active duty* ..." (emphasis ours).

The elements of the standard are then specifically defined:

"For the purposes of this subsection -- (emphasis ours)

(1) a period of active duty is continuous ... (not in issue)

(2) a part of a *year* that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded; ..." (emphasis added)

The prefatory phrase "... For the purposes of this subsection ..." refers to the entire subsection. It is in no way limited to computation alone.

The clauses (1) and (2) specifically define or modify:

"continuous active duty"

and

"years"

Were the man on the street shown the statute stripped to its elements and asked what it meant, he would say, "It means that six months or more counts as a whole year."

## II.

**THE GOVERNMENT DOES NOT DENY THAT SINCE 1958, THE NAVY DEPARTMENT HAS ROUTINELY BEEN ALLOWING ENLISTED NAVY-MARINE, REGULAR-RESERVE, 20-YEAR ACTIVE DUTY MEMBERS TO RETIRE WITH 19 YEARS SIX MONTHS ACTIVE DUTY UNDER 10 U.S.C. §6330**

The clauses that set the standard of the two statutes are:

"...at least five years on continuous active duty,..." 10 U.S.C. §687(a).

"... 20 or more years of active service ..." 10 U.S.C. §6330.

The defining clauses are:

"For the purposes of this subsection -

(2) A part of a year that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded;..." 10 U.S.C. §687(a).

(d) For the purposes of subsections

(b) [completed 20 or more years of active service] and

(c) [formula for pay]

a part of a year that is six months or more is counted as a whole year and a part of a year that is less than six months is disregarded..." 10 U.S.C. §6330.

The words of the statutes are exactly the same.

The Government construes them differently, favoring the Regulars over the Reserves.<sup>1</sup>

<sup>1</sup>The Government admits on page 12 of its Brief that the Rounding Section of 10 U.S.C. §6330 applies to both eligibility and computation. While both Regulars and Reserves are protected by 10 U.S.C. §6330, it is submitted the number of Reserves serving 19½ years on active duty is nominal.

## III.

**THE DIFFERENT CONSTRUCTIONS OF THE TWO  
STATUTES, BOTH APPLYING TO RESERVISTS, IS  
DISCRIMINATORY AND REPUGNANT TO 10  
U.S.C. §277.**

"Laws applying to both Regulars and Reserves shall  
be administered without discrimination —

- (1) among Regulars;
- (2) among Reserves; and
- (3) between Regulars and Reserves."

10 U.S.C. §277.

The department of defense is violating the spirit of  
the reserve readjustment pay statute, 10 U.S.C. §687(a)  
when it encourages certain Reservists to extend their  
tour of duty over four years, not with the hope of  
retiring "on 20", but instead promising readjustment  
pay should they be involuntarily separated and then  
reneging on its promise. It is little wonder the armed  
forces are having serious problems in retaining bright,  
capable and motivated young officers such as these.<sup>2</sup>

The Government has broken its word.

Respectfully submitted,

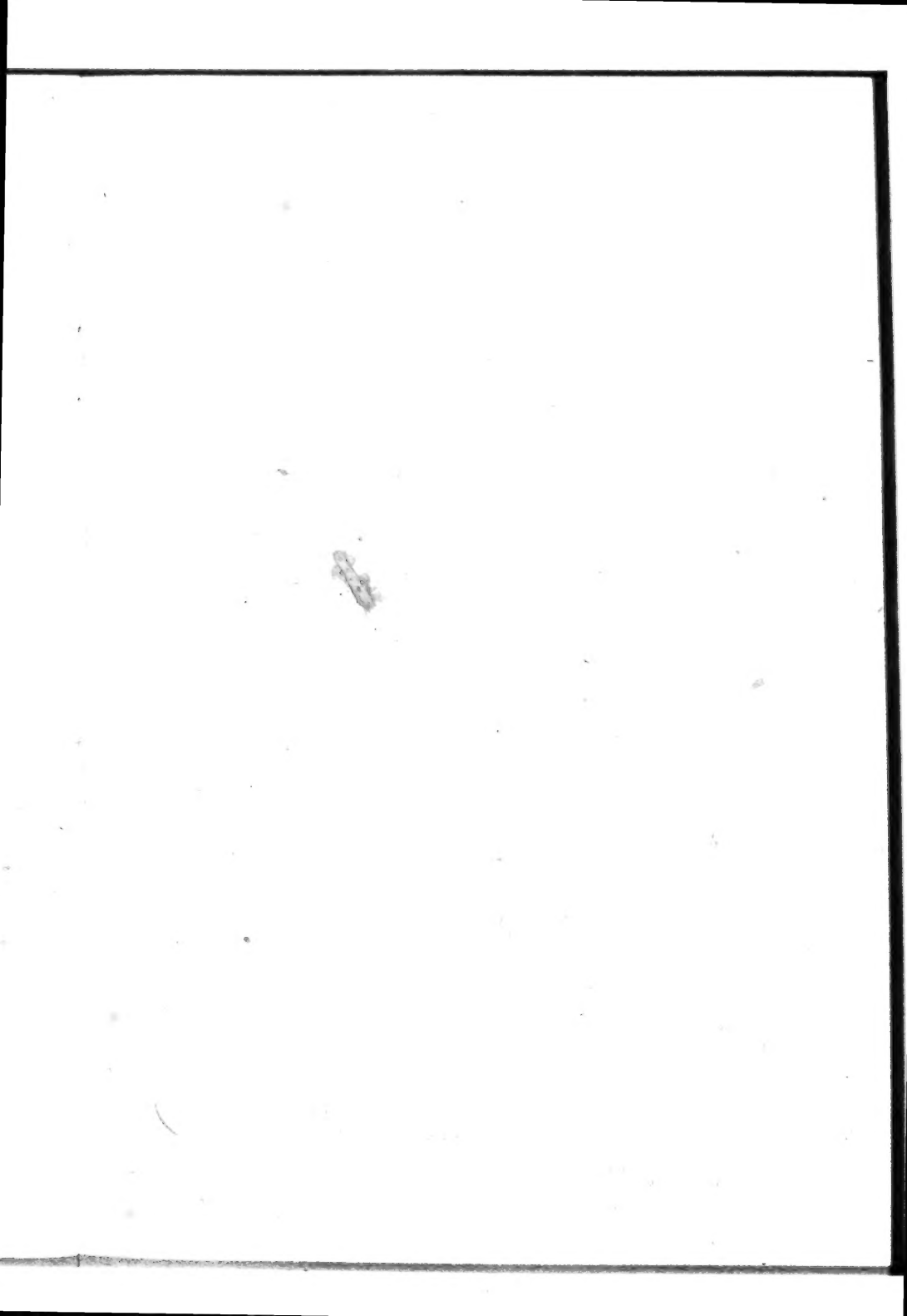
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<sup>2</sup>Captains Adams, Steneman and Youngquist are all highly  
qualified, honorably separated service men, — Marine Aviators.



## CASS v. UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR  
THE NINTH CIRCUIT

No. 73-604. Argued April 16, 1974—Decided May 28, 1974\*

Title 10 U. S. C. § 687 (a) provides for readjustment pay for an Armed Forces Reservist who is involuntarily released from active duty and has completed, immediately before his release, "at least five years of continuous active duty," computed by multiplying his years of active service by two months' basic pay of his grade at the time of release, and further provides that "[f]or the purposes of this subsection— . . . (2) a part of a year that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded . . . ." *Held*: The "rounding" provision, as is clear from the statute's legislative history, applies only in computing the amount of readjustment pay, and not in determining eligibility therefor; hence, a Reservist must serve a minimum of five full years of continuous active duty before his involuntary release in order to qualify for readjustment benefits. Pp. 75-84.

483 F. 2d 220, affirmed.

WHITE, J., delivered the opinion of the Court, in which BURGER, C. J., and BRENNAN, STEWART, MARSHALL, BLACKMUN, POWELL, and REHNQUIST, JJ., joined. DOUGLAS, J., filed a dissenting statement, *post*, p. 84.

Arthur B. Hanson argued the cause for petitioner in No. 73-604. With him on the briefs was Charles A. Smith. William A. Dougherty, by appointment of the Court, 416 U. S. 934, argued the cause and filed briefs for petitioners in No. 73-5661.

William L. Patton argued the cause for respondents in both cases. With him on the brief were Solicitor General

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\*Together with No. 73-5661, *Adams et al. v. Secretary of the Navy et al.*, also on certiorari to the same court.

*Bork, Acting Assistant Attorney General Jaffe, Robert E. Kopp, and Anthony J. Steinmeyer.*<sup>†</sup>

MR. JUSTICE WHITE delivered the opinion of the Court.

Congress has provided in 10 U. S. C. § 687 (a)<sup>1</sup> that an otherwise eligible member of a reserve component of the Armed Forces, who is involuntarily released from active duty, "and who has completed, immediately before his release, at least five years of continuous active duty, is entitled to a readjustment payment computed by multiplying his years of active service . . . by two months' basic pay of the grade in which he is serving at the time of his release." It is further provided that "[f]or the purposes of this subsection— . . . (2) a part of a year that is six

<sup>†</sup>Kevin M. Forde filed a brief for John N. O'Meara as *amicus curiae* urging reversal in both cases.

<sup>1</sup>In full, 10 U. S. C. § 687 (a) provides:

"§ 687. Non-Regulars: readjustment payment upon involuntary release from active duty.

"(a) Except for members covered by subsection (b), a member of a reserve component or a member of the Army or the Air Force without component who is released from active duty involuntarily, or because he was not accepted for an additional tour of active duty for which he volunteered after he had completed a tour of active duty, and who has completed, immediately before his release, at least five years of continuous active duty, is entitled to a readjustment payment computed by multiplying his years of active service (other than in time of war or of national emergency declared by Congress after June 28, 1962), but not more than eighteen, by two months' basic pay of the grade in which he is serving at the time of his release. However, a member who is released from active duty because his performance of duty has fallen below standards prescribed by the Secretary concerned, or because his retention on active duty is not clearly consistent with the interests of national security, is entitled to a readjustment payment computed on the basis of one-half of one month's basic pay of the grade in which the member is serving at the time of his release from active duty. A person covered by this subsection may not be paid more than

months or more is counted as a whole year, and a part of a year that is less than six months is disregarded . . . .” We must decide whether the “rounding” provision set forth in § 687 (a) (2) is to be applied in determining eligibility for readjustment pay, as well as in computing the amount of readjustment pay to which an eligible reservist is entitled, so that involuntarily released reservists who have completed four years and six months or more, but less than five years, of continuous active duty prior to their release are nonetheless entitled to a readjustment payment. The Court of Appeals held that the rounding clause applied only to computation of readjustment payments, 483 F. 2d 220 (1973), contrary to the earlier decision of the Court of Claims that the rounding provision is applicable in determining eligibility for, as well as computation of, readjustment payments under § 687. *Schmid v. United States*, 193 Ct. Cl. 780, 436 F. 2d 987, cert. denied, 404 U. S. 951 (1971). We granted certiorari to resolve the conflict, 414 U. S. 1128 (1974), and now affirm the judgment of the Court of Appeals.

Each petitioner had served continuously for more than four years and six months, but less than five years, when notified that he would be honorably but involuntarily released from active duty in the reserves. In No. 73-604, petitioner Cass, a captain in the Army Reserve, was in fact released from active duty before completing five

two years’ basic pay of the grade in which he is serving at the time of his release or \$15,000, whichever amount is the lesser. For the purposes of this subsection—

“(1) a period of active duty is continuous if it is not interrupted by a break in service of more than 30 days;

“(2) a part of a year that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded; and

“(3) a period for which the member concerned has received readjustment pay under another provision of law may not be included.”

## Opinion of the Court

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years of service, and when the Army denied his request for readjustment pay, he brought suit in the United States District Court for the District of Montana, which granted relief on the authority of the Court of Claims' decision in *Schmid, supra*. In No. 73-5661, petitioners Adams, Steneman, and Youngquist, captains in the Marine Corps Reserve, brought separate actions in the Central District of California, prior to their release, seeking a modification of their release orders to provide for readjustment pay. The District Court subsequently held that they were entitled to readjustment pay based on active service of more than four and one-half years.<sup>2</sup> The Government's appeals from the decisions of the two District Courts were consolidated, and the Court of Appeals reversed each, holding that the statute and its legislative history make clear that readjustment pay is not to be provided to reservists involuntarily released from active duty with less than five full years of continuous service.<sup>3</sup>

Petitioners assert to the contrary that the language of § 687 (a) unambiguously establishes that four and

<sup>2</sup> The District Court had earlier granted petitioners' motion for a preliminary injunction prohibiting their involuntary release without readjustment pay. As a result, these petitioners had each served more than five years on active duty by the time the decision awarding them readjustment benefits was rendered. In deciding they were entitled to readjustment pay, however, the District Court expressly disclaimed any reliance on the fact that they actually served more than five years, since they were permitted to do so only under the compulsion of the court's preliminary injunction. The injunction was dissolved as moot in the wake of the award of readjustment pay.

<sup>3</sup> The Court of Appeals also held that the injunction granted in favor of petitioners in No. 73-5661, see n. 2, *supra*, was improperly issued and could not be relied upon to support eligibility for readjustment benefits. 483 F. 2d 220, 222 (1973). That ruling is not challenged in this Court.

one-half years of continuous active service qualifies an involuntarily released reservist for readjustment benefits, that the legislative history of the rounding provision should therefore not be considered in resolving the issue, and that even if the legislative history is considered, it supports the construction urged by petitioners as much as that contended for by the Government. We are unpersuaded by these arguments, however.

The statute sets out both the eligibility requirements for entitlement to readjustment pay and the method of computing the amount of the applicable payment in the same sentence. Entitlement is based, in part, on the completion, immediately before the involuntary release of a reservist, of "at least five years of continuous active duty," and the payment is to be computed by multiplying the reservist's "years of active service" by two months' basic pay of the grade in which he is serving when released. Because the rounding provision expressly provides that it is to be applied for "purposes of this subsection," petitioners contend that the provision modifies the term "year" whenever that term appears in the subsection, i. e., to determine whether a reservist has completed five years of service to be eligible for readjustment benefits, as well as to determine the number of years of service to use as a multiplier in computing the amount of readjustment pay owed. This is so plainly true, petitioners contend, that resort to legislative history is unnecessary and improper.<sup>4</sup>

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<sup>4</sup> Petitioners rely on cases suggesting that recourse to legislative materials is unwarranted when the meaning of statutory language is clear and unequivocal. *E. g.*, *United States v. Oregon*, 366 U. S. 643, 648 (1961); *Ex parte Collett*, 337 U. S. 55, 61 (1949); *Helvering v. City Bank Co.*, 296 U. S. 85, 89 (1935); *United States v. Shreveport Grain & Elevator Co.*, 287 U. S. 77, 83 (1932). In the first two of these cases, though finding the language to be construed this

Our view is to the contrary. The rounding provision is arguably subject to the interpretation given it by petitioners, but did Congress intend that provision to override its explicit requirement of "at least" five years of service? We think the answer to that question is sufficiently doubtful to warrant our resort to extrinsic aids to determine the intent of Congress, which, of course, is the controlling consideration in resolving the issue before us.<sup>5</sup> Moreover,

clear, the Court nonetheless did look at the legislative history of the statutory provisions to be interpreted.

<sup>5</sup> A majority of the Court of Claims in *Schmid v. United States*, 193 Ct. Cl. 780, 436 F. 2d 987 (1971), though they also examined the legislative history, found it clear from the language of § 687 (a) that the rounding provision should apply to both eligibility and computation determinations, whereas the Court of Appeals in these cases thought it clear that the minimum five-year eligibility clause is "not subject to the interpretation given it by the court in *Schmid*." 483 F. 2d, at 222. Obviously there is room for reasonable dispute over the construction of § 687 (a) based on the statutory language alone.

Petitioners tender other arguments, apart from that founded on the consistent use of the word "years," to demonstrate that, read in its statutory context, the rounding provision in § 687 (a) was plainly intended to establish the minimum qualifying term of service at four years, six months, but none of them overcomes the ambiguity created by the direct establishment of "at least five years" of service as a qualification for readjustment benefits. Thus, it is argued that § 687 (a)(3) excludes from the determination of both eligibility and the amount of benefits payable "a period for which the member concerned has received readjustment pay under another provision of law," and given the grammatical structure of § 687 (a), n. 1, *supra*, that the rounding rule in subsection (2) must be applied for the same purposes as the "prior period exclusion" rule of subsection (3). The Government asserts that the underlying premise that subsection (3) applies for both purposes is erroneous. As was the case with the rounding provision before codification, see text *infra*, the prior period exclusion was expressly to be applied only "[f]or the purposes of computing the amount of the readjustment payment." Act of June 28, 1962, 76 Stat. 120. Furthermore, the current Department of Defense Military Pay and Allowances Entitlements Manual § 40414 (b) (Jan. 1, 1967) still excludes such prior service only for